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3 **So Ordered.**



Patricia C. Williams
Patricia C. Williams
Bankruptcy Judge

4 **Dated: November 16th, 2012**
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11 UNITED STATES BANKRUPTCY COURT
12 EASTERN DISTRICT OF WASHINGTON

13 In re:

14 LLS AMERICA, LLC,

15 Debtor.

No. 09-06194-PCW11

16 _____
17 BRUCE P. KRIEGMAN, solely in
18 his capacity as court-appointed
Chapter 11 Trustee for LLS America,
LLC,

19 Plaintiff,

Adv. No. 11-80297-PCW

20 vs.

21 0817726 BC, LTD., et al.,

22 Defendants.
23 _____

MEMORANDUM DECISION RE:
CERTAIN DEFENDANTS' MOTIONS
TO DISMISS

24 This adversary is one of hundreds commenced by the trustee of the LLS America,
25 LLC ("LLS America") bankruptcy estate, which adversaries seek to recover money paid
26 by the debtor to certain lenders or investors as part of an alleged Ponzi scheme
27 conducted by the debtor. The following defendants filed motions to dismiss on April 25,
28 2012 in this adversary proceeding:

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<u>Defendant</u>	<u>ECF No.</u>
692323 Capital, Inc.	174
BBI Group Investments	176
Dave and Bev Coello	178
Harrison Bay Dairy Farm, Ltd.	180
Doug and Barbara James	182
Iris MacDonald	186
Elaine Nichols	188
Gary and Erin Padgham	190
Gary and Iris Padgham	192
Thomas and Glenda Popowich	194
Mike and Marcelle Power	196
Kathy Roberts	198
Jackson Saunders	200
Martha Schultz	202
Ron and Lois Taylor	204
Stan and Diane Tymkow	248

In a similar adversary, *Kriegman v. Cooper*, No. 11-80093-PCW, a written decision was entered on July 2, 2012, ECF No. 146, regarding similar motions to dismiss and an oral decision was rendered on May 24, 2012, ECF No. 118, on the issue of pleading fraud with particularity (“Previous Decision”). The issues regarding dismissal raised in the subject motions are the same as those raised in the Previous Decision. Many of the facts in the Previous Decision are relevant to the subject motions.

The trustee in a supplemental affidavit of Curtis Frye, ECF No. 238, and the defendants, by declarations, provided the following evidence:

1. 692323 Capital, Inc. - The trustee presented evidence in this case that the defendant loaned or invested \$30,113.42 (USD) and one (1) promissory note was issued. In eight (8) distributions occurring from June 2008 to August 2008, the defendant received \$64,000.02 (USD). According to the trustee, the defendant filed a proof of claim in the amount of \$155,000 in the underlying LLS America case. By declaration (ECF No. 175), Marvin Toews, on behalf of the defendant, presented evidence that it resides in Alberta, Canada, and did not solicit any business in the United States. The declaration does not state if the defendant was formed under the laws of Canada or the United States. The declaration further states that the loans or investments were solicited in Canada, but no details were provided regarding the manner of the solicitation.

1 2. BBI Group Investments - The trustee presented evidence in this case that
2 the defendant loaned or invested \$32,500 (CAN) and two (2) promissory notes were
3 issued. In 42 disbursements occurring from May 2004 to December 2008, the defendant
4 received \$94,926.69 (CAN). According to the trustee, the defendant filed a proof of
5 claim in the amount of \$63,000 in the underlying LLS America case. By declaration
6 (ECF No. 177), Amar Bains, on behalf of the defendant, presented evidence that it was
7 formed under the laws of Canada, does not operate a business in the United States, and
8 each promissory note listed a Canadian entity as borrower with distributions only made
9 in Canadian currency. The declaration further states that the loans or investments were
10 solicited in Canada, but no details were provided regarding the manner of solicitation.

11 3. Dave and Bev Coello - The trustee presented evidence in this case that the
12 defendants loaned or invested \$60,000 (CAN) and four (4) promissory notes were
13 issued. In 61 distributions occurring from September 2004 to February 2009, the
14 defendants received \$66,846.14 (CAN). According to the trustee, the defendants filed
15 a proof of claim in the amount of \$84,000 in the underlying LLS America case. By
16 declaration (ECF No. 179), the defendants presented evidence that they reside in
17 Canada, rarely travel to the United States, and “virtually all” promissory notes listed a
18 Canadian entity as borrower with distributions primarily made from Canadian entities.
19 The declaration further states that the loans or investments were solicited in Canada, but
20 no details were provided regarding the manner of solicitation.

21 4. Harrison Bay Dairy Farm, Ltd. - The trustee presented evidence in this case
22 that the defendant loaned or invested \$50,000 (CAN) and one (1) promissory note was
23 issued. In 29 distributions occurring from November 2004 to January 2008, the
24 defendant received \$81,249.91 (CAN). According to the trustee, the defendant filed a
25 proof of claim in the amount of \$93,750.08 in the underlying LLS America case. By
26 declaration (ECF No. 181), Eric Van Dyk, on behalf of the defendant, presented
27 evidence that it was formed under the laws of Canada, does not operate a business in the
28 United States, and each promissory note listed a Canadian entity as a borrower with

1 distributions only made from Canadian entities. The declaration further states that the
2 loans or investments were solicited in Canada, but no details were provided regarding
3 the manner of solicitation.

4 5. Doug and Barbara James - The trustee presented evidence in this case that
5 the defendants loaned or invested \$15,000 (USD) and two (2) promissory notes were
6 issued. In 322 distributions occurring from October 1999 to October 2008, the
7 defendants received \$78,976.15 (USD) and \$90,067.28 (CAN). According to the trustee,
8 the defendants filed proofs of claims in the amount of \$30,000 (USD) and \$23,000
9 (CAN) in the underlying LLS America case. By declaration (ECF No. 183), the
10 defendants presented evidence that they reside in Canada and rarely travel to the United
11 States. The declaration further states that the loans or investments were solicited in
12 Canada, but no details were provided regarding the manner of solicitation.

13 6. Iris MacDonald - The trustee presented evidence in this case that the
14 defendant loaned or invested \$60,000 (CAN) and four (4) promissory notes were issued.
15 In 45 distributions occurring between November 2005 and February 2009, the defendant
16 received \$64,284 (CAN). According to the trustee, the defendant filed a proof of claim
17 in the amount of \$85,050 in the underlying LLS America case. By declaration (ECF No.
18 187), the defendant presented evidence that she resides in Canada, rarely travels to the
19 United States, and each promissory note listed a Canadian entity as borrower with
20 distributions primarily made from Canadian entities. The declaration further states that
21 the loans or investments were solicited in Canada, but no details were provided
22 regarding the manner of solicitation.

23 7. Elaine Nichols - The trustee presented evidence in this case that the
24 defendant loaned or invested \$20,000 (USD) and two (2) promissory notes were issued.
25 In 197 distributions occurring from February 2002 to January 2009, the defendant
26 received \$58,671.10 (USD). According to the trustee, the defendant filed a proof of
27 claim in the amount of \$54,600 in the underlying LLS America case. By declaration
28 (ECF No. 189), the defendant presented evidence that she resides in Canada, has not

1 traveled to the United States for business matters, and “virtually all” promissory notes
2 listed a Canadian entity as borrower. The declaration further states that the loans or
3 investments were solicited in Canada, but no details were provided regarding the manner
4 of solicitation.

5 8. Gary and Erin Padgham - The trustee presented evidence in this case that
6 the defendants loaned or invested \$24,000 (CAN) and four (4) promissory notes were
7 issued. In 22 distributions occurring from September 2005 to March 2009, the
8 defendants received \$55,366.67. According to the trustee, the defendants filed a proof
9 of claim in the amount of \$67,526.84 in the underlying LLS America case. By
10 declaration (ECF No. 191), the defendants presented evidence that they reside in
11 Canada, have not traveled to the United States for any business matters, and each
12 promissory note listed a Canadian entity as borrower with distributions primarily made
13 from Canadian entities. The declaration further states that the loans or investments were
14 solicited outside the United States, but no details were provided regarding the manner
15 of solicitation.

16 9. Gary and Iris Padgham - The trustee presented evidence in this case that the
17 defendants loaned or invested \$30,000 (CAN) and four (4) promissory notes were
18 issued. In 22 distributions occurring from December 2005 to July 2008, the defendants
19 received \$76,000 (CAN). According to the trustee, the defendants filed a proof of claim
20 in the amount of \$87,728.60 in the underlying LLS America case. By declaration (ECF
21 No. 193), the defendants presented evidence that they reside in Canada, have not
22 traveled to the United States for any business matters, and each promissory note listed
23 a Canadian entity as borrower with distributions primarily made from Canadian entities.
24 The declaration further states that the loans or investments were solicited outside the
25 United States, but no details were provided regarding the manner of solicitation.

26 10. Thomas and Glenda Popowich - Trustee presented evidence in this case that
27 the defendants loaned or invested \$75,000 (CAN) and four (4) promissory notes were
28 issued. In 43 distributions occurring from November 2005 to February 2009, the

1 defendants received \$80,372.70 (CAN). According to the trustee, the defendants filed
2 a proof of claim in the amount of \$99,665.14 in the underlying LLS America case. By
3 declaration (ECF No. 195), the defendants presented evidence that they reside in
4 Canada, rarely travel to the United States, and each promissory note listed a Canadian
5 entity as borrower with distributions primarily made from Canadian entities. The
6 declaration further states that the loans or investments were solicited in Canada, but no
7 details were provided regarding the manner of solicitation.

8 11. Mike and Marcelle Power - The trustee presented evidence in this case that
9 the defendants loaned or invested \$80,000 (CAN) with 11 promissory notes issued. In
10 83 distributions occurring from December 2004 to October 2008, the defendants
11 received \$97,594.82 (CAN). According to the trustee, the defendants filed a proof of
12 claim in the amount of \$141,111.36 in the underlying LLS America case. By declaration
13 (ECF No. 197), the defendants presented evidence that they reside in Canada, have not
14 traveled to the United States for any business matters, and each promissory note listed
15 a Canadian entity as borrower with distributions primarily made from Canadian entities.
16 The declaration further states that the loans or investments were solicited in Canada, but
17 no details were provided regarding the manner of solicitation.

18 12. Kathy Roberts - The trustee presented evidence in this case that the
19 defendant loaned or invested \$40,000 (CAN) and three (3) promissory notes were issued.
20 In 131 distributions occurring from September 2003 to June 2008, the defendant
21 received \$90,166.66 (CAN). According to the trustee, the defendant filed a proof of
22 claim in the amount of \$40,000 in the underlying LLS America case. By declaration
23 (ECF No. 199), the defendant presented evidence that she resides in Canada, rarely
24 travels to the United States, and each promissory note listed a Canadian entity as
25 borrower with distributions primarily made from Canadian entities. The declaration
26 further states that the loans or investments were solicited in Canada, but no details were
27 provided regarding the manner of solicitation.

1 13. Jackson Saunders - The trustee presented evidence in this case that the
2 defendant loaned or invested an unknown amount and one (1) promissory note was
3 issued. In 46 distributions occurring from June 2003 to July 2008, the defendant
4 received \$61,000 (CAN). According to the trustee, the defendant filed a proof of claim
5 in the amount of \$34,983 in the underlying LLS America case. By declaration (ECF No.
6 201), the defendant presented evidence that he resides in Canada, rarely travels to the
7 United States, and each promissory note listed a Canadian entity as borrower with
8 distributions primarily made from Canadian entities. The declaration further states that
9 the loans or investments were solicited in Canada, but no details were provided
10 regarding the manner of solicitation.

11 14. Martha Schultz - The trustee presented evidence in this case that the
12 defendant loaned or invested \$25,000 (CAN) and seven (7) promissory notes were
13 issued. In 115 distributions occurring from January 2001 to July 2008, the defendant
14 received \$49,700.76 (CAN). According to the trustee, the defendant filed a proof of
15 claim in the amount of \$36,000 in the underlying LLS America case. By declaration
16 (ECF No. 203), the defendant presented evidence that she resides in Canada, rarely
17 travels to the United States, and each promissory note listed a Canadian entity as
18 borrower with distributions primarily made from Canadian entities. The declaration
19 further states that the loans or investments were solicited in Canada, but no details were
20 provided regarding the manner of the solicitation.

21 15. Ron and Lois Taylor - The trustee presented evidence in this case that the
22 defendants loaned or invested an unknown amount and four (4) promissory notes were
23 issued. In 162 disbursements occurring from May 1998 to March 2009, the defendants
24 received \$68,041.62 (CAN). According to the trustee, the defendants filed a proof of
25 claim in the amount of \$30,000 in the underlying LLS America case. By declaration of
26 only Lois Taylor (ECF No. 205) as co-defendant Ron Taylor is now deceased, she
27 presented evidence that she resides in Canada, does not have regular interactions with
28 the United States, and each promissory note listed a Canadian entity as borrower with

1 distributions primarily made from Canadian entities. The declaration further states that
2 the loans or investments were solicited in Canada, but no details were provided
3 regarding the manner of solicitation.

4 The trustee in the affidavit of Curtis Frye filed in adversary proceeding No. 11-
5 80157-PCW, ECF No. 11, and the defendants Stan and Diane Tymkow, by declaration,
6 provided the following evidence:

7 Stan and Diane Tymkow - The trustee presented evidence that the defendant
8 loaned or invested \$50,000 (CAN) and three (3) promissory notes were issued. In 23
9 distributions occurring from January 2006 to February 2009, the defendant received
10 \$53,230.05 (CAN). According to the trustee, the defendant filed a proof of claim in the
11 amount of \$70,000 in the underlying LLS America case. By declaration (ECF No. 249),
12 defendant Diana Tymkow presented evidence that co-defendant Stan Tymkow is
13 deceased, that she resides in Canada, rarely travels to the United States, and each
14 promissory note listed a Canadian entity as borrower with distributions primarily made
15 from Canadian entities. The declaration further states that the loans or investments were
16 solicited in Canada, but no details were provided regarding the manner of the
17 solicitation.

18 The grounds for dismissal in the subject motions are: (1) ineffective service of
19 process; (2) improper extraterritorial application of United States bankruptcy law; and
20 (3) failure to state the alleged fraud with particularity as required by Fed. R. Civ. P.
21 (9)(b). The reasoning regarding the denial of dismissal based on those grounds is set
22 forth in the Previous Decision and is applicable to the subject motions.

23 As in the Previous Decision, one basis for the request to dismiss is the lack of
24 personal jurisdiction. As articulated in the Previous Decision, the filing of a proof of
25 claim is a consent to jurisdiction to adjudicate that claim and the related action brought
26 by the trustee of the LLS America estate under 11 U.S.C. § 548. The reasoning regarding
27 the denial of dismissal based upon a consent to personal jurisdiction is set forth in the
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1 Previous Decision and is applicable to the subject motions, which are **DENIED**. Counsel
2 for the defendants shall submit orders consistent with this decision.

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4 ///END OF MEMORANDUM DECISION///
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